CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

REGIONAL BENCH - COURT NO. 02

Service Tax Appeal No. 90034 of 2018

(Arising out of Order-in-Appeal No. NA/GST A-III/MUM/85 to 88/2018-19 dated 28.05.2018 passed by Commissioner of GST and CX. (Appeals-III), Mumbai)

M/s Cactus Communications Pvt. Ltd. .....**Appellant**
510, Shalimar Morya Park,
New Link Road, Andheri (W),
Mumbai-400053

VERSUS

Commissioner of C.G.ST, Mumbai West .....**Respondent**
Mahavir Jain Vidyalaya, Juhu Lane,
Andheri (West), Mumbai,
Maharashtra-400058

WITH

(i) Service Tax Appeal No. 90035/2018 (M/s Cactus Communications Pvt. Ltd.); (ii) Service Tax Appeal No. 90036/2018 (M/s Cactus Communications Pvt. Ltd.); (iii) Service Tax Appeal No. 90037/2018 (M/s Cactus Communications Pvt. Ltd.)

(Arising out of Order-in-Appeal No. NA/GST A-III/MUM/85 to 88/2018-19 dated 28.05.2018 passed by Commissioner of GST and CX. (Appeals-III), Mumbai)

Appearance:

Shri Manoj Chauhan, C.A. for the Appellant
Shri Dharmendra Singh, Authorized Representative for the Respondent

CORAM:
HON'BLE MRS. ARCHANA WADHWA, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86764-86767/2019

Date of Hearing: 26.09.2019
Date of Decision: 26.09.2019

Per: ARCHANA WADHWA

All the appeals are being disposed of by a common order as they arising out of the same impugned order passed by the lower authorities. The dispute in the present appeal relates to denial of refund claim of accumulated Cenvat credit in terms of the provisions of Rule 5 of Cenvat credit Rules, 2004 on the ground that input services has no nexus with the output activities.

2. Both sides agreed with the issue stands decided in the same assessee's case vide Final Order No. A/86651-86655/2019 dated 20.09.2019. It stands observed in the said order as follows:

> "4. However, it is seen that no objection was raised by the revenue at the time of availing of credit. Rule 5 allows refund of accumulated credit and at the time of grant of refund, the Revenue is not permitted to examine the availability of the CENVAT credit. Such an exercise was required to be adopted by the Revenue at the time of availment of credit, by way of initiation of separate proceedings. Having not done that, it is not permissible to raise the objection at the time of grant of refund in terms of the said rule.
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> The reliance by the Learned Advocate to the Circular no. 120/01/2010-ST dated 19.01.2010 clarifying the issue that by observing that there cannot be different yardstick for establishing nexus for taking of credit and for refund of credit, is appropriate. Otherwise also, we find the issue stands decided by the many decisions of the Tribunal. One such reference can be made to the Tribunal decision in the case of *Barclay Global Service Centre Pvt. Ltd.& Ors. V. Commissioner of Central Excise & Service tax, Noida [2019-TIOL-1714-CESTAT-ALL].* It stands held in the said decision that as no objection was raised by the Revenue at the time of availing the credit, such objection cannot be raised at the time of deciding the refund claim in terms of provision of Rule 5."

3. The issue has also been considered by the Tribunal in the case of *Accelya Kale Solutions Ltd. Vs. Commissioner of Central Goods Service Tax and Central Excise, Mumbai [2018-TIOL-2452-CESTAT-MUM].* Wherein it was observed, as under:-

"3. Rule 5 of Cenvat Credit Rules, 2004, was substituted vide Notification No. 18/2012-CE (NT) dated 17.03.2012, with effect from 01.04.2012. The said substituted rule has prescribed the formula for claiming refund of service tax by the service provider. Under such amended rule in vogue, there is no requirement of satisfying the nexus between the input services and the output service provided by the service provider. Consequent upon substitution of the said Rule in the Union Budget – 2012, the Tax Research Unit (TRU) of CBEC vide letter dated 16.03.2012 has clarified as under:-

> *"F.1. Simplified scheme for refunds:*
>
> *1. A simplified scheme for refunds is being introduced by substituting the entire Rule 5 of Cenvat Credit Rules, 2004. The new scheme does not require the kind of correlation that is needed at present between exports and input services used in such exports. Duties or taxes paid on any goods or services that qualify as inputs or input services will be entitled to be refunded in the ratio of the export turnover to total turnover.*
>
> *2. .... "*

4. Inasmuch as the issue stands decided, I set aside the impugned order and allow the appeal with consequential relief to the appellant.

(Operative part of the order pronounced in the open court)

(Archana Wadhwa)
Member (Judicial)

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